repairs was not especially complicated or threatening, nor was there reason to believe that an accident was likely to occur. During the progress of the work, due to the decayed condition of the car, a part of it fell upon and seriously injured the plaintiff. *Held,* the defendant is not liable. *Bunn* v. *Atlantic Coast Line R. R.* (N. C.), 86 S. E. 503.

A master incurs no liability for injury to his servant unless such injury grow out of a breach of duty owed by the master to the servant. *Conkey Co.* v. *Larsen,* 173 Ind. 585, 91 N. E. 163; *Tobler* v. *Pioneer Mining & Mfg. Co.,* 166 Ala. 482, 52 South. 86. It is a duty of the master to exercise ordinary care and diligence to provide a reasonably safe place. *Miller* v. *Missouri Pacific Ry. Co.,* 109 Mo. 350, 19 S. W. 58, 32 Am. St. Rep. 673; *Crandall* v. *N. Y., etc., R. R. Co.,* 19 R. I. 594, 35 Atl. 307; *McGuire* v. *Bell Telephone Co.,* 167 N. Y. 208, 60 N. E. 433, 52 L. R. A. 437. It is a further duty of the master to exercise ordinary care and diligence to maintain a reasonably safe place. *National Syrup Co.* v. *Carlson,* 155 Ill. 210, 40 N. E. 492; *Chesson* v. *Roper Lumber Co.,* 118 N. C. 59, 23 S. E. 925; *Lillie* v. *American Car & Fdry. Co.,* 209 Pa. St. 161, 58 Atl. 272. Consequently, unless it is shown that the master was negligent in that he did not exercise ordinary care and diligence to provide and maintain a reasonably safe place, no recovery can be had. *Baltimore & Potomac R. R. Co.* v. *State,* 75 Md. 152, 23 Atl. 310, 32 Am. St. Rep. 372; *Essex County Electric Co.* v. *Kelley,* 57 N. J. L. 100, 29 Atl. 427.

The question whether there was a breach of duty to exercise ordinary care and diligence to provide or maintain a reasonably safe place is one of fact to be deduced from the evidence. There is no dogmatic principle by which the existence of a breach of duty may be determined in any particular case. Therefore, the conclusion reached in the principal case may be sound, but it is evident that the reasoning in the opinion is fallacious. Thus the court reached its decision by regarding the principle requiring the master to exercise ordinary care and diligence to provide and maintain a reasonably safe place as applicable chiefly in the case of machinery more or less complicated, and not to ordinary, everyday conditions requiring no special care, preparation, or inspection, and where there is no good reason to suppose that injury will result. Such a restricted application can be justified neither on principle nor authority. Thus the rule requiring a master to provide and maintain a reasonably safe place is applicable to ordinary conditions, as well as those involving the use of power machinery. See *Chesson* v. *John L. Roper Lumber Co., supra; Lillie* v. *American Car & Fdry. Co., supra.*

TAXATION—RECOVERY OF ILLEGAL TAX—VOLUNTARY PAYMENT.—A tax which included an illegal assessment was levied against the plaintiff. He tendered the legal portion of the tax, which was refused; and, in order to escape a penalty for the nonpayment of the legal part, paid the entire amount under protest. *Held,* the illegal excess may be recovered. *Chicago, etc., Co.* v. *Bowman County* (N. D.), 153 N. W. 986.

It seems well settled that an injunction will not be granted to restrain the collection of an illegal tax, since the tax-payer has an ade-

quate remedy at law by which to recover the amount illegally collected. *Arkansas Building & Loan Ass'n* v. *Madden,* 175 U. S. 269. See 1 VA. L. REV. 87. But taxes paid voluntarily are not recoverable, although erroneously assessed. *Kehe* v. *Blackhawk County,* 125 Ia. 549, 101 N. W. 281; *Gould* v. *Board of Commissioners,* 76 Minn. 379, 79 N. W. 303. And a payment is presumed voluntary until the contrary appears. *Yates* v. *Royal Ins. Co.,* 200 Ill. 202, 65 N. E. 726. It has been held that taxes paid before a threat of levy, or duress of any kind, are paid voluntarily and, though illegally levied, are not recoverable. *Railroad Co.* v. *Commissioners,* 98 U. S. 541; *Phelps* v. *City,* 112 N. Y. 216, 19 N. E. 408. And a payment of taxes in advance of the time that their collection may be enforced is likewise voluntary, and hence may not be recovered. See *Carton* v. *Board of Commissioners,* 10 Wyo. 416, 69 Pac. 1013.

If, however the payment is made under such circumstances as to render it involuntary, the illegal portion of the tax may be recovered in an action at law. *Swift & Co.* v. *United States,* 111 U. S. 22; *Atchison, etc., R. Co.* v. *O'Connor,* 223 U. S. 280, 28 Ann. Cas. 1050; *Ætna Ins. Co.* v. *Mayor,* 153 N. Y. 331, 47 N. E. 593. Thus, where illegal taxes are paid to prevent a sale of goods under a collector's warrant, the payment is involuntary and the illegal portion of the tax may be recovered. *Creamer* v. *Bremen,* 91 Me. 508, 40 Atl. 555; *Lindsay* v. *Allen,* 19 R. I. 721, 36 Atl. 840. And the payment of an illegal license tax under threats of arrest is likewise made involuntarily. *Magnolia* v. *Sharman,* 46 Ark. 358; *Chicago* v. *Klinkert,* 94 Ill. App. 524. Also, where an illegal tax is paid in order to prevent a factory from remaining idle, the payment is involuntary, and may be recovered. See *Atlas Powder Co.* v. *Goodloe* (Tenn.), 175 S. W. 547.

But, in order for the payment to be involuntary, it must be made under legal duress of person or goods. *Conkling* v. *City,* 132 Ill. 420, 24 N. E. 67. See *Phœbus* v. *Manhattan Club,* 105 Va. 144, 52 S. E. 839. The element of compulsion must be present. *Robins* v. *Latham,* 134 Mo. 466, 36 S. W. 33. Mere protest alone will not suffice, if the payment is not itself involuntary. *Raisler* v. *Mayor,* 66 Ala. 194; *Canfield, etc., Co.* v. *Manistee,* 100 Mich. 466, 59 N. W. 164. And it seems that where the payment is in fact made involuntarily, specific protest is not necessary. *Newberry* v. *Detroit* (Mich.), 150 N. W. 838.

WILLS—ELECTIONS—ELECTION BY WEAK MINDED PERSON.—The will of a testator made ample provision for his insane widow and for his daughters. Under the will the share of any daughter who died without issue was to devolve upon the survivors. One of the daughters had issue, while the others adopted children. In order to enable the adopted children to inherit, the guardian of the insane widow filed a petition in equity for leave to exercise the widow's statutory right of election to take against the will. *Held,* the petition is refused. *In re Bringhurst* (Pa.), 95 Atl. 320.

The statutory right of the widow to elect to take under the will of her husband, or to take against the will and under the law is a personal right. *Lewis* v. *Lewis,* 29 N. C. 72; *Camardella* v. *Schwartz,* 126 App. Div.